

Newton, Mimi

From: Stephen M. Richmond <SRichmond@bdlaw.com>
Sent: Friday, December 13, 2013 12:39 PM
To: Newton, Mimi
Subject: Siemens Water Facility in Parker, Arizona

Mimi – I am writing to confirm my understanding of our discussions relating to the pending sale of the Siemens Water business to a third party and the impact on interim status at the Siemens facility in Parker, Arizona.

As we discussed earlier in the year, Siemens Industry, Inc. placed its Parker facility into a wholly owned subsidiary, Siemens Water Technologies LLC (SWT), effective July 1, 2013. We had reached agreement prior to that change that this event would not constitute a change in ownership or control under 40 CFR 270.72(a)(4), understanding that this was part of a two-step transaction.

As a planned second step, Siemens Industry, Inc. has now announced an intended sale of the LLC membership interest in SWT to a subsidiary of a third party private equity company, AEA. We had previously discussed that the sale of SWT to a third party might constitute a change in ownership or control. However, at that time, we did not contemplate that the purchaser would be a private equity company which would buy only the membership interest in the company and would plan to have the company continue to function in its current form. As we have discussed, AEA plans on buying the membership interest of SWT, so that SWT will continue to be the owner of the facility, and announcements to date indicate that the leadership team of SWT will generally be kept in place to run the company. As AEA's web site indicates, it views its holdings as investments, and they generally maintain an independent existence to their customers and the public. While the SWT name will likely change, the entity will continue to exist, those running the company will in large part stay in place, and the company will continue to own and operate the Parker facility and make the management decisions that are customarily made by owners and operators.

As we have discussed recently, our view is that under the Supreme Court's decision in *US v. Bestfoods*, entities such as SWT maintain a distinct existence separate from their parent companies for purposes of establishing who is an owner or operator under environmental laws; and under these facts it would appear that there is no change in ownership or operational control as contemplated by 40 CFR 270.72(a)(4).

I understand from our discussions that EPA agrees that the specific facts of this sale will not constitute a change in ownership or operational control of the Parker facility under 40 CFR 270.72(A)(4), provided that as EPA moves to finalize the pending RCRA permit for the Parker facility, EPA may wish to have a current official of SWT submit a certification to the truth and accuracy of the completed permit application in order to ensure that all updates to the application, including updates that have recently been provided and will likely be provided in the immediate future in response to specific questions from EPA, have been certified by a current official of the company.

Please let me know if I have accurately summarized our discussion. Thank you again for your assistance in this matter.

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